IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 20987 of 2004

Between:

1.A. Janga Reddy, S/o. Chenna Reddy,

2.A. Pratap Reddy, S/o. Chenna Reddy,

3.A. Surrender Reddy, S/o. Late A. Veera Reddy,

4.A. Lakshmi Devi, W/o. Late A. Veera Reddy,

5.A. Ramchandra Reddy, S/o. Achi Reddy,

6.A. Veera Reddy, S/o. Krishna Reddy,

7.A. Vital Reddy, S/o. Achi Reddy,

8.A. Janga Reddy, S/o. Narayan Reddy,

9.A. Sunitha, W/o. Late Sreenivas Reddy,

10.A. Narsimha Reddy, S/o. Narayan Reddy,

11.A. Yadagiri Reddy, S/o. Sankar Reddy,

12.A. Mutyam Reddy, S/o. Sankar Reddy,

(All are Agriculturists by Occupation, and R/o Nagole village, Uppal Mandal, Ranga Reddy District.)

....PETITIONERS

AND

1. The Government of Andhra Pradesh, rep by its Secretary, Municipal Administration and Urban Development, Secretariat, Hyderabad.

2. The District Collector, Ranga Reddy District at Hyderabad.

3. The Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy East Division, Goshamahal, Hyderabad.

4. Hyderabad Metropolitan Water Supply and Sewerage Board, Khairatabad, Hyderabad.

(R4 is impleaded as per Court order dt.16-12-2004 in WPMP No.29340 of 2004)

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus by declaring the impugned 4(1) notification issued by the respondents dt.18-10-2004 bearing proceedings No.G2/473/2002 is illegal, arbitrary and unconstitutional and consequently set-aside the same.

Counsel for the Petitioners: MR.B.VIJAYSEN REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR LAND ACQUISITION

Counsel for the Respondent No.4: MS.M.VENKATESWARI

The Court made the following:

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ORDER:

Petitioners filed this writ petition questioning the draft notification dated 18-10-2004 issued under Section 4 (1) of the Land Acquisition Act (for brevity 'the Act') and the draft declaration dated 20-10-2004 issued by the Government proposing to acquire their lands.

2. The case of the petitioners, in brief, is that they are the absolute owners and possessors of Acs.67-38gts, in S.Nos.82, 83, 84, 85 and 86 of Nagole village, Uppal Mandal, Ranga Reddy District, and that they eak out their livelihood by growing Para-grass in that land, and that 3rd respondent (Land Acquisition Officer), without any valid reason, by invoking urgency clause, dispensing with enquiry under Section 5-A of the Act, published a draft notification on 18-10-2004 and draft declaration on

20-10-2004 for acquiring the aforesaid Ac.67-38gts of land for construction of Sewerage Treatment Plant (STP). That there is no urgency for dispensing with the enquiry under Section 5-A of the Act would be evident from that fact that first respondent (Government of Andhra Pradesh) had on 02.01.1983 published a notification for acquisition of Acs.185-00 of land belonging to them and others (including the aforesaid Acs.67-38gts) for the same purpose of construction of STP, and conducted enquiry under Section 5-A of the Act. Since the objections raised by

them were rejected, they filed W.P.No.15743 of 1986, challenging those acquisition proceedings on various grounds, which was allowed on 10-06-1987 quashing the notification and that order became final. Again, on 08-05-1998, a notification under Section 4(1) of the Act was published proposing to acquire Acs.186-34gts, belonging to them and others including the aforesaid Acs.67-38gts, for the very same purpose of establishing an STP, but since no award was passed, that notification lapsed. After the lapse of the said notification in 1998, land owners, whose lands are not proposed to be acquired under the impugned notification, converted their agriculture lands into house plots and sold them away to others, for construction of houses. Since the main source of livelihood of theirs is agriculture, they (petitioners) did not change the nature of their lands. Earlier, in or around 1980, the other agricultural lands belonging to them were acquired by the Hyderabad Urban Development Authority (HUDA) for the purpose of laying a ring road. Thus, they lost some of their agricultural lands earlier. If their remaining agricultural lands are acquired, they would be put to hardship. The fact that the government is actuated by mala fides in making repeated attempts to acquire their lands only would be evident from the fact that though about 1000 acres of land in S.No.87 of Marpalli village and S.No.9 of Fatullaguda of Hayatnagar Mandal, which are at a distance of three furlongs from the lands proposed to be acquired and which abut the Nala, are available for establishing STP, their lands are only chosen for establishing STP. Since Nagole became a part and parcel of Hyderabad agglomeration, several residential colonies, schools, Corporate Hospitals, Government Institutions, bus depots etc. came up near the land proposed to be acquired and so establishment of STP in such a place would affect the health of the citizens living there and the surrounding areas. For the above reasons, the impugned notification is liable to be quashed.

3. On behalf of respondents 1 to 3, third respondent (Land Acquisition Officer) filed his counter affidavit contending that after receipt of the letter dated 05-01-2003 from the General Manager (Engineering) Projects Division of the fourth respondent, making a request for acquisition of Acs.67-38gts in S.Nos.82, 83, 84, 85 and 86 of Nagole village and for delivery of possession thereof, he, at the instance of Collector, Ranga Reddy, initiated land acquisition proceedings, invoking the urgency clause and published the draft notification and declaration, Mandal

Revenue Inspector took possession of the lands of petitioners on 17.11.2004 and delivered it to the 4th respondent on the same day. Petitioners who did not file objections questioning the acquisition proceedings initiated in 1998 cannot be said to be prejudiced by the present acquisition. Long prior to the impugned notification, Acs.53-29gts in S.No.9 of Fatullaguda, belonging to the Government, was alienated to the 4th respondent for establishing STP and possession of that land was delivered to the 4th respondent on 31.05.2000. In view thereof remaining needed area of Acs.67-38gts only is proposed to be acquired under the impugned notification. Since the land in S.No.87 of Marpalli, referred to by the petitioners, is classified as 'Kancha' Reserved Forest, it cannot be used for establishment of STP.

4. Fourth respondent, at whose instance and for whose benefit the land is proposed to be acquired, filed the counter affidavit of its Executive Director giving out the detailed reasons for the proposed acquisition.

5. The main contention of the learned counsel for the petitioners is that since respondents 1 to 3, who proposed to acquire the lands of the petitioners covered by the impugned notification, along with other lands, invoking the emergency clause, had issuing notifications twice for the same purpose of establishing STP earlier and failed to take further steps, impugned proceedings, invoking the urgency clause, show that even though there is no real urgency to dispense with the enquiry under Section 5-A of the Act it is so dispensed with, only to cause prejudice to the petitioners. It is his contention that since petitioners are solely depending on agriculture, and since some of their agricultural lands were acquired earlier for laying of the ring road, if their remaining lands are acquired by virtue of the proposed acquisition, they would be deprived of their livelihood and so the impugned notification is liable to be quashed, in view of the ratio in **K.RAMULU v STATE OF A.P.**. His next contention is that since compliance with Section 17(3A) of the Act is mandatory as held in **YEREDLA NARAYAN REDDY v. GOVERNMENT OF A.P.** and since respondents did not tender 80% of the value of the lands, the impugned notification is liable to be quashed. It is his contention that the alleged taking over possession of the land of the petitioners is only a make believe affair and that petitioners are still in possession of the land proposed to be acquired. He also relied

on **UNION OF INDIA v. SHAKUNTALA GUPTA, UNION OF INDIA v. MUKHESH HANS** and **UNION OF INDIA v. KRISHAN LAL ARNEJA**.

6. The contention of the learned Government pleader is that since establishment of STP, with the funds received the Union Government, is an urgent need, inquiry under Section 5-A of the Act was dispensed with and since there are no mala fides on the part of the Government in acquiring the land of the petitioners, acting on the requisition of fourth respondent, there are no grounds to quash the impugned notification.

7. The contention of the learned Standing Counsel for 4th respondent is that an expert committee, which surveyed several lands in and around Nagole, found the lands of petitioners and some other government lands near the lands of petitioners most suitable for establishment of STP, and so 4th respondent made a request to the government to alienate its land near the lands of the petitioners and after the government delivered possession of Acs.53-29gts of Fatullaguda, the notification impugned, proposing to acquire the lands of the petitioners was published, and so, the fact that a smaller area than that was notified earlier only is notified for acquisition under the impugned notification, is not and cannot be a ground for imputing mala fides. It is her contention that since the petitioners who filed a writ petition questioning the earlier notification issued, had not even filed objections when second notification for acquisition was issued, it is clear that no prejudice is caused to them due to dispensation of the enquiry under Section 5-A of the Act under the impugned notification. It is her contention that petitioners who, admittedly, are growing only Para-grass in the land notified for acquisition, and since (according to her) Para-grass causes injury to the animals and human beings also, as it breeds mosquitoes and causes contamination (for the reasons mentioned in the counter affidavit filed on behalf of the 4th respondent), by the proposed acquisition and establishment of STP there would be enormous reduction in pollution. It is her contention that an amount of eight crores rupees was deposited with the Land Acquisition Officer, for payment of 80% of the value to the land-holders whose lands are to be acquired and since 4th respondent took possession of the property and is making preparation to proceed with the work of establishing STP, there are no

grounds to interfere with the impugned notification.

8. The notification is challenged mainly on the ground that there is no real urgency, for dispensing with the enquiry under Section 5-A of the Act and that there are mala fides on the part of the Government in targeting the petitioners only though vast extent of land suitable for the purpose of establishing STP is available very near to the lands of the petitioners, notified for acquisition. The third ground is that since 80% of the compensation as contemplated by Section 17(3A) of the Act is not paid, the notification is invalid. The fourth ground is that repeated acquisition of the lands of petitioners violates Article 14 of the Constitution.

9. I would take up the fourth contention first. The specific case of petitioners is that since some of their lands were acquired by HUDA prior to 1980 for laying the ring road, the present notification, proposing to acquire their remaining land violates Article 14 of the Constitution. Strong reliance is placed by the learned counsel for petitioners on **K.RAMULU** case (1 supra) in support of the said contention. The facts of that case disclose that K.Ramulu was owning Acs.20.00 of land. From out of that land government acquired Acs.10-00gts once and Acs.3-30gts for the second time for providing house sites to harijans. His case was that Acs.3-00 belonging to him was forcibly occupied by third parties. When the Government proposed to acquire Acs.2-15gts belonging to K.Ramulu for a third time, for providing house sites to harijans, he filed the writ petition questioning the said acquisition. That petition was allowed on the ground that repeated acquisition of the land of a same person, for the same purpose would offend Article 14 of the Constitution, on the ground that there is no material on record to show that no other land of Acs.2-15cents in the village, which can be used for providing house sites to harijans, except the land of K.Ramulu is available for acquisition. The facts of that case are entirely different from the facts in this case. No single individual is targeted in this case. There are 12 petitioners, who claim to be inter-related. Acquiring lands of several persons for different purposes is different from acquiring land of a single individual on different occasions for the very same purpose. The fact that the land of some of the petitioners, or their ancestors, was acquired by HUDA way back in 1980, for laying a

ring road, would not and cannot be an impediment for acquisition of the other lands of the petitioners, for establishing of STP, which undoubtedly is for a public purpose. So, the ratio in **K.Ramulu** case (1 supra) does not apply to this case. In these circumstances, it cannot be said that the impugned notification offends Article 14 of the Constitution.

10. The other ground relates to mala fides. That on two earlier occasions Government notified Acs.185-00gts of land belonging to petitioners and others was notified for acquisition is an admitted fact. The first notification was quashed by this Court and the second notification lapsed for not completing the acquisition proceedings within two years. The fact that respondents who failed to complete the acquisition proceedings earlier, made a fresh notification for acquisition, would not make the notification mala fide, if the acquisition is for a public purpose. Pollution of environment and water, due to lack of sewerage treatment, is a well-known fact. So, acquisition for establishment of STP cannot be said to be a purpose, which is not a public purpose. The case of the petitioners is that about 1000 acres of land in S.No.87 of Marpalli and S.No.9 of Fatullaguda can be utilized for the purpose of establishing STP. The counter affidavit of third respondent shows that S.No.87 of Marpalli is Reserve Forest. It is well-known that land notified as Reserve Forest has to be preserved as such, and so that land cannot be used for establishment of STP. From the counter affidavit filed on behalf of the 4th respondent it is seen that on a survey for finding suitable land for establishing STP, the lands covered by the impugned notification and the adjacent land belongs to Government to an extent of Acs.53-29gts in S.No.9 of Fatullaguda were found to be most suitable for establishment of the STP. For that reason and for the reason that it is not the case of the petitioners that there is a political or other motive in selecting their lands for acquisition, the proposed acquisition of the land of the petitioners cannot be said to be vitiated by mala fides.

11. The other contention relates to lack of urgency for dispensing with the enquiry under Section 5-A of the Act and consequently petitioners losing their valuable right to put forth their objections for the acquisition during enquiry under Section 5-A of the Act. In **DELHI ADMINISTRATION v. GURDIP SINGH UBAN** the apex Court, while considering the scope of enquiry under Section 5-A of the Act, held that

the objections that can be raised under Section 5-A of the Act can relate to (i) the purpose for which the land is proposed to be acquired not being for a public purpose, (ii) even it is a public purpose, it is not necessary that their land alone should be acquired as there is other land specified by them, would serve the public purpose, and (iii) even if the land is necessary for the public purpose, in the special fact-situation in which they are placed, their lands may be omitted from acquisition. The undisputed fact is that in 1983 the Government proposed to acquire Acs.185-00gts of land belonging to the petitioners and others. That notification was challenged by the petitioners and others and this Court struck down that notification. Again, on 08-05-1998, a fresh notification proposing to acquire Acs.186-34gts including the lands covered by the impugned notification was issued under Section 4(1) of the Act. The specific case of respondents is that none of the petitioners filed objections questioning that notification. If they felt aggrieved, petitioners could have raised the objections now raised in this petition during enquiry under Section 5-A of the Act, in 1998. Their failure to raise any objections in 1998 shows that petitioners have no real objection. From the allegations made in the affidavit filed in support of the petitioners it is prima facie clear that petitioners filed this petition as a foundation to enable them to claim higher compensation. For that reason and for the reason that establishment of STP is a public purpose, petitioners cannot be said to be aggrieved, and no prejudice can be said to have been caused to the petitioners due to the dispensing with the enquiry under Section 5-A of the Act.

12. Since the fact situation in **MUKHESH HANS** case (4 supra) and **KRISHAN LAL ARNEJA** case (5 supra) are entirely different from the facts of this case, the fact that notifications dispensing with the enquiry under Section 5-A of the Act were quashed in those cases, cannot be a ground for quashing the impugned notification. In **MUKHESH HANS** case (4 supra) notification under Section 17 of the Act was issued on 30.06.1988 for acquisition of 72 bighas of land for 'planned development of Delhi'. On facts it was found that on 24.07.1973 a notification for acquisition of 40 bighas (which is included in the subsequent notification) was made for the very same purpose and that it was allowed to be lapsed and that that fact was not brought to the notice of the Lt. Governor. That omission was taken into consideration by the High Court to reach the conclusion that the decision to exclude Section 5-A inquiry suffered from the vice of non-application of mind. The High Court set aside the Lt.

Governor's decision to dispense with the inquiry under Section 5-A but permitted the acquisition proceedings to be continued afresh from the stage of Section 4(1). Aggrieved by the High Court quashing the declaration under Section 6 of the Act, Central Government appealed to the Supreme Court. The Apex Court observing

> "ever since the revival of the festival the concluding programme was continued in a piece of land situated in the specified khasra of Mehrauli village which is now sought to be acquired along with certain other lands. There is no material on record to show that either the said festival had been discontinued for want of land or the owners of the land where the festival had its concluding ceremony are preventing the utilization of that land for the said purpose. Moreover, an attempt to acquire 40 bighas of the land for the very same purpose was allowed to be lapsed by the authorities concerned by efflux of time which was also a relevant factor to be taken note of by the Lt. Governor when he took the decision to dispense with the Section 5-A inquiry, in the absence of any reference in the file to the need of invoking Section 17(4) indicates that the authority concerned was not apprised of all the necessary and relevant facts before taking a decision in question".

upheld the decision of the Delhi High Court. In this case, when petitioners had an opportunity to question the acquisition notification in 1998 they did not raise any objections. That fact was taken into consideration by respondents while dispensing with the enquiry under Section 5-A of the Act.

13. In **SHAKUNTALA GUPTA** case (3 supra) and **KRISHAN LAL ARNEJA** case (5 supra), which arose out of the same notification 14 properties, including the properties belonging to Shakuntala Gupta and Krishan Lal Arneja who were requisitioned under Defence of India Rules, were notified for acquisition on 6th March, 1987 under the provisions of Section 4 and Section 17(1) and (4) of the Act. Banwari Lal and Sons and Shakuntala Gupta and Krishan Lal Arneja whose properties were also notified for acquisition had questioned the validity of acquisition proceedings by filing separate writ petitions. Those writ petitions were allowed and acquisition proceedings were quashed including the notification dated 6th March, 1987 on the ground that existence of the urgency is not stated in the impugned notification. The facts in this case are entirely different from the facts in those cases. In those cases, the properties notified for acquisition were in possession of the Government for housing its offices and also for use as residential quarters of its officers. The finding of the Court was that the notification was vitiated due to lack of bona fide. So, the fact that the Courts in those cases found that there was no apparent need for dispensing with enquiry under Section 5-A of the Act in the facts

and circumstances of those cases cannot be a ground for quashing the notification impugned in this case. In this case, the urgency is establishing the STP and the reasons for the acquisition also are mentioned in the notification. Public interest should give way to the personal interest of the petitioners. If the work is not commenced immediately the funds allotted would lapse and execution of the project also gets delayed.

14. The contention of the petitioners that possession of the lands was not taken over from them is not and cannot be correct, because the documents produced by the 4th respondent clearly show that lands of petitioners taken possession of under panchanama on 17.11.2004 were delivered to the Estate Officer of 4th respondent by the Mandal Revenue Officer, Uppal, on 17.11.2004.

15. From the file produced before me it is seen that the draft notification under Section 4 of the Act was published on 18.10.2004 in the Andhra Pradesh Gazette and draft declaration under Section 6 of the Act was published on 20.10.2004 and a publication in a vernacular news paper was made on 30.10.2004, and notices, in fact, were served to all the petitioners either on 02.11.2004 or 03.11.2004. On 08.11.2004 some of the petitioners gave a representation to the third respondent that the time given for their appearance is very short, and is not sufficient to gather the required persons, who have interest over the land notified for acquisition, and some time is required for mobilizing the persons to take their consent to appoint an authorized agent etc. to pursue the land acquisition case before the authorities, and so some time for securing the attendance of all the interested persons and for filing of the statements etc. may be granted. Petitioners did not even state that they are prejudiced and that they have some objections for acquisition. Therefore, petitioners cannot be said to be prejudiced by the enquiry under Section 5-A of the Act being dispensed with. The fact that petitioners being agriculturists would be deprived of their livelihood due to acquisition cannot be a ground for quashing the impugned notification because when compensation awarded to them, petitioners can purchase some other agricultural land.

16. The other contention is that respondents taking over possession of the land, without paying 80% of the estimated compensation, as contemplated by Section 17(3-A) of the Act, entitles quashing of the notification impugned. In para-36 of **KRISHAN LAL ARNEJA** case (5 supra) relied on by the learned counsel for the petitioners, the apex Court held that it is not necessary to deal with the contention, if due to non-compliance of the Section 17(3-A) of the Act, the entire acquisition proceedings would be vitiated, because they upheld the order of the High Court on other grounds. So, that decision is not of help to decide this point. No doubt, in **YEREDLA NARAYAN REDDY** case (2 supra) a Division Bench of this Court held that payment of 80% compensation is mandatory, but another Division Bench of this Court in **MANAGING DIRECTOR, APSRTC v. M. KAMALA KUMARI** relying on **SATENDRA PRASAD JAIN v. STATE OF U.P.**[9] and **GOVERNMENT OF A.P. v. MOHD. MOINUDDIN HUSSAIN**[10] held that failure of the authorities to tender 80% of the estimated compensation under Section 17(3-A) of the Act before taking over possession would not vitiate the land acquisition proceedings. In **SATENDRA PRASAD JAIN** case (9 supra) a three Judge Bench of the Apex Court held that even if 80% of the estimated compensation is not paid, as mandated by Section 17(3A) of the Act, taking over possession does not become illegal and the land would still vest with the Government. So, merely because possession from petitioners was taken without paying 80% of the estimated value of the land, the proceedings do not get vitiated.

17. Fourth respondent i.e. Hyderabad Metro Water Supply and Sewerage Board department deposited an amount of Rs.8,00,00,000/- (Rupees eight crores only) with the third respondent. Since possession is taken over from the petitioners, amount can be ordered to be released in favour of the petitioners. After third respondent passing the award, if the petitioners are not satisfied with the compensation awarded to them they do have the right to seek a reference to Civil Court under Section 18 of the Act for determination of the compensation and so I do not find any grounds to quash the impugned notification.

18. Therefore, the writ petition is disposed of with a direction to the third respondent (the Land Acquisition Officer) to disburse 80% of the estimated compensation to the

petitioners as expeditiously as possible, at any rate within a period of two weeks from the date of receipt of a copy of this order and pass an award as expeditiously as possible. No costs.

(C.y.Somayajulu, J.)

Date: 14-03-2005.

Cvrk

..... REGISTRAR

To

1. The Secretary, Municipal Administration and Urban Development, Secretariat, Government of Andhra Pradesh, Hyderabad.

2. The District Collector, Ranga Reddy District at Hyderabad.

3. The Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy East Division, Goshamahal, Hyderabad.

4. Hyderabad Metropolitan Water Supply and Sewerage Board, Khairatabad, Hyderabad.

5. 2 copies to the Government Pleader for Land Acquisition, High Court Buildings, Hyderabad. (OUT)

6. 2 CD copies.

7. 1 CC to MS.VENKATESWARI

8. 1 CC to MR.VIJAYSEN REDDY